

Indiana Department of Revenue

Revenue Ruling 2001-03IT

February 6, 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Gross Income Tax – Agency

Authority: IC 6-2.1-2-2, Rule 45 IAC 1.1-6-10, Rule 45 IAC 1.1-1-2, Policy Management Systems Corp. v. Indiana Department of State Revenue, 720 N.E.2d 20 (Ind. Tax Ct. 1999), Universal Group Limited V. Indiana Department of State Revenue, 642 N.E.2d 553 (Ind. Tax Ct. 1994)

The taxpayer requests the Department to rule whether or not the reimbursement of wages, payroll taxes and various other employee benefits paid to, and for, worksite employees represents income received in an agency capacity, therefore, exempt from Indiana gross income tax.

STATEMENT OF FACTS

The taxpayer is engaged in the business of providing professional employer services. The taxpayer submitted a copy of the "Client Service Agreement" which indicates the responsibilities of both the taxpayer and its client upon the client purchasing the taxpayer's employee services. The "Client Service Agreement" reveals that the taxpayer assumes certain rights and duties of an employer during the contract period which include:

1. paying the wages to, and payroll tax for, employees located at the client's worksite (worksite employees);
2. paying for various other employee benefits for worksite employees;

(It should be noted that the taxpayer's cost for items number one and two is reimbursed by the taxpayer's client. The taxpayer, also, receives a fee from its client for providing employer services.)

3. to hire, terminate, discipline and reassign worksite employees; and
4. to provide workers' compensation insurance coverage for worksite employees.

The "Client Service Agreement", further, provides that upon termination of the agreement the taxpayer is obligated to notify each worksite employee that the employee's employment with the taxpayer will be terminated.

DISCUSSION

IC 6-2.1-2-2 provides that gross income tax is imposed upon the entire gross receipts of a taxpayer who is a resident or domiciliary of Indiana and the gross receipts derived from business activity within Indiana by a taxpayer who is not a resident or domiciliary of Indiana. Rule 45 IAC 1.1-6-10, however, states that income received in an agency capacity is excluded from gross income. Rule 45 IAC 1.1-6-10 further states that "A reimbursement of a taxpayer's own expenses are never excluded from gross income." Rule 45 IAC 1.1-1-2 defines an agent as:

- (a) "Agent" means a person or entity authorized by another to transact business on its behalf.
- (b) A taxpayer will qualify as an agent if it meets both of the following requirements:
 - (1) The taxpayer must be under the control of another. An agency relationship is not established unless the taxpayer is under the control of another in transacting business on its behalf. The relationship must be intended by both parties and may be established by contract or implied from the conduct of the parties. The representation of one (1) party that it is the agent of another party without the manifestation of consent and control by the alleged principal is insufficient to establish an agency relationship.
 - (2) The taxpayer must not have any right, title, or interest in the money or property received from the transaction. The income must pass through, actually or substantially, to the principal or a third party, with the taxpayer being merely a conduit through which the funds pass between a third party and the principal.

The Indiana Tax Court, in Policy Management Systems Corp. v. Indiana Department of State Revenue, 720 N.E.2d 20 (Ind. Tax Ct. 1999) and Universal Group Limited v. Indiana Department of State Revenue, 642 N.E.2d 553 (Ind. Tax Ct. 1994), has reviewed the issue of agency as it applies to gross income taxation. The Court echoed Rule 45 IAC 1.1-1-2 and Rule 45 IAC 1.1-6-10 by finding that an agency relationship includes consent by the principal, acceptance of authority by the agent and control of the agent by the principal. The Court, also, held that reimbursement of a taxpayer's own expenses is subject to gross income tax regardless of whether an agency relationship exists or not.

In the instant case, the relationship between the taxpayer and its client is not one of agent and principal, but rather, one of buyer and seller as the required elements of consent, acceptance and control are lacking. Further, regardless of whether or not an agency relationship exists between the taxpayer and its clients, the reimbursement by the clients of the wages, payroll taxes and various other employee benefits paid to, and for, worksite employees is reimbursement of the taxpayer's own expenses as the worksite employees, in fact, are employees of the taxpayer rather than the clients. The reimbursement of wages, payroll taxes and various other employee benefits paid by the taxpayer, therefore, is subject to Indiana gross income tax pursuant to the above referenced IC 6-2.1-2-2 and Rule 45 IAC 1.1-6-10.

RULING

The Department rules that the reimbursement of the taxpayer for wages, payroll taxes and various other employee benefits paid to, and for, worksite employees by its clients does not represent income received in an agency capacity, hence, is subject to Indiana gross income tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

DEPARTMENT OF STATE REVENUE